IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16203 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NOOTAN BHARTI MADANA - Petitioner(s)

Versus

DIRECTOR OF EMPLOYMENT & TRAINING GUJARAT STATE & 3 - Respondent(s)

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Appearance :

MR DK ACHARYA for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 4.
MR. PRACHCHHAK, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,
MR IS SUPEHIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order for quashing and

setting aside the order passed by the Joint Director of Employment & Training, Gandhinagar, State of Gujarat dated 19.5.2005 by which the petitioner is directed to absorb the teaching and non-teaching staff who are declared as surplus.

2. Initially, it was the contention on behalf of the petitioner that the petitioner cannot be compelled to accept and/or absorb the surplus teacher/s as according to the petitioner the appointment of the staff is required to be made as per the provisions of the Grant-in-Aid code and agreement with the State Government.

3. In response to the notice issued by this Court, Shri Prachchhak, learned AGP appears on behalf of the respondents and an affidavit-in-reply is filed on behalf of the respondents and the State Government has relied upon the judgment and order passed by the learned Single Judge of this Court (Coram: Hon'ble Mr. Justice S.K.Keshote J., as he then was) dated 20th October, 1997 rendered in Special Civil Application No.5178 of 1992 in support of their submission that if the petitioner is taking Grant, than the institution taking Grant is bound to accept and/or absorb the

surplus teacher/staff.

4. Shri Acharya, learned advocate appearing on behalf of the petitioner is not in a position to dispute that the controversy in question, is not covered by the judgment and order passed by the learned Single Judge of this Court rendered in Special Civil Application No.5178 of 1992 however, he has submitted that the question with regard to seniority of the existing staff may arise. It is required to be noted that such a contention is neither raised in the petition, nor those staff whose seniority might be affected, has disputed the same. Under the circumstances, petitioner cannot make a grievance with regard to the same. However, it is observed that such a question as and when arises, the same be decided by the parties in accordance with law and the scheme of absorption of surplus teacher/staff. Shri Acharya, learned advocate appearing on behalf of the petitioner has filed affidavit-in-reply to the sur-rejoinder and assured the Court that the surplus staff who is ordered to be absorbed will not be harassed by the management. It is observed that if the surplus staff who is ordered to be absorbed is harassed, it will be open for the staff to approach the concerned authority by an appropriate application and the

appropriate authority is directed to consider the same and hold necessary inquiry and take an appropriate action in accordance with law.

5.With the above observations, the present Special Civil Application is dismissed for the reasons stated in the judgment and order passed by the learned Single Judge of this Court rendered in Special Civil Application No.5178 of 1992 as the petitioner is bound to absorb the surplus teacher as the petitioner is taking Grant hence, the present Special Civil Application is dismissed. Notice is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.